

Subpart G—Post-Vietnam Era Veterans' Educational Assistance Under 38 U.S.C. Chapter 32

AUTHORITY: 38 U.S.C. 501(a), ch. 32, unless otherwise noted.

SOURCE: 45 FR 31, Jan. 2, 1980, unless otherwise noted.

ADMINISTRATIVE

§ 21.5001 Administration of benefits: 38 U.S.C. Chapter 32.

(a) *Delegation of authority.* Except as otherwise provided, authority is delegated to the Under Secretary for Benefits and to supervisory or administrative personnel within the jurisdiction of the Education Service, Veterans Benefits Administration, designated by him or her to make findings and decisions under 38 U.S.C. Chapter 32 and the applicable regulations, precedents, and instructions, as to the program authorized by subpart G of this part.

(Authority: 38 U.S.C. 512(a))

(b) *Administrative provisions.* In administering benefits payable under 38 U.S.C. Chapter 32, VA will apply the following sections:

- (1) Section 21.4002—Finality of decisions;
- (2) Section 21.4003 (except paragraphs (d) and (e))—Revision of decisions;
- (3) Section 21.4005—Conflicting interests;
- (4) Section 21.4006—False or misleading statements;
- (5) Section 21.4007—Forfeiture;
- (6) Section 21.4008—Prevention of overpayments; and
- (7) Section 21.4009—Overpayments; waiver or recovery.

(Authority: 38 U.S.C. 3241(a), 3680, 3683, 3685, 3690, 6103)

[61 FR 29029, June 7, 1996]

GENERAL

§ 21.5020 Post-Vietnam era veterans' educational assistance.

Title 38 U.S.C. Chapter 32 provides for a participatory program for educational assistance benefits to eligible veterans and servicepersons. The in-

tent of the Congress for this program is stated in 38 U.S.C. 3201.

(Authority: 38 U.S.C. 3201)

[61 FR 29029, June 7, 1996]

§ 21.5021 Definitions.

For the purpose of subpart G and payment of Chapter 32 benefits the following definitions apply:

(a) *Veteran*—means anyone whose service meets the requirements of § 21.5040.

(Authority: 38 U.S.C. 3202(1))

(b) *Active duty*—means full-time duty in the Armed Forces or as a commissioned officer of the regular or Reserve Corps of the Public Health Service or of the National Oceanic and Atmospheric Administration. It does not include any period during which an individual:

- (1) Was assigned full-time by the Armed Forces to a civilian institution for a course of education which was substantially the same as established courses offered to civilians,
- (2) Served as a cadet or midshipman at one of the service academies,
- (3) Served under the provisions of section 511(d) of Title 10, United States Code, pursuant to an enlistment in the military reserve or national guard,
- (4) Served in an excess leave without pay status, or
- (5) Served in a status specified in § 3.15 of this chapter.

(Authority: 38 U.S.C. 3202)

(c) *State*—means each of the several States, territories and possessions of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the Canal Zone.

(Authority: 38 U.S.C. 101(20))

(d) *School, educational institution, institution.* The terms, *school, educational institution*, and *institution* mean—

- (1) Any vocational school, business school, correspondence school, junior college, teacher's college, college, normal school, professional school, university or scientific or technical institution;
- (2) Any public or private elementary school or secondary school which offers courses for adults; and

Department of Veterans Affairs

§ 21.5021

(3) An entity, during the period beginning on November 2, 1994, and ending on September 30, 1996, other than an institution of higher learning, that provides training required for completion of a State-approved alternative teacher certification program.

(Authority: 38 U.S.C. 3202(2), 3452(c))

(e) *Participant*—means a person who is participating in the educational benefits program established under Chapter 32. This includes:

(1) A person who has enrolled in and is making contributions by monthly payroll deduction to the *fund*.

(2) Those individuals who have contributed to the *fund* and have not disenrolled (i.e., users or potential users of benefits).

(Authority: 38 U.S.C. 3202)

(3) A person who has enrolled in and is having monthly contributions to the *fund* made for him or her by the Secretary of Defense.

(Authority: Sec. 903, Pub. L. 96-342, 94 Stat. 1115)

(4) A person who has made a lump-sum contribution to the fund in lieu of or in addition to monthly contributions deducted from his or her military pay.

(Authority: 38 U.S.C. 3222)

(5) Those individuals who have contributed to the *fund* and—

(i) Have been automatically disenrolled as provided in §21.5060(b)(3) of this part,

(ii) Whose funds have been transferred to the Treasury Department as provided in §21.5064(b)(4)(iii) of this part, and

(iii) Who are found to have qualified for an extended period of eligibility as provided in §21.5042 of this part.

(Authority: 38 U.S.C. 3232; Pub. L. 99-576)

(f) *Fund*—means that trust fund account established to maintain dollar contributions of the participant (and contributions, if any, from the Department of Defense).

(Authority: 38 U.S.C. 3222)

(g) *Suspends*—means a participant stops contributing to the *fund* (temporarily or permanently).

(h) *Disenrolls*—means a participant terminates participation and forfeits any entitlement to benefits except for a refund of his or her contributions previously made.

(Authority: 38 U.S.C. 3221)

(i) *Hardship or other good reasons*—means circumstances considered to be such by the Department of Defense and the Department of Veterans Affairs when referring to suspension or disenrollments, such as illness of the participant or a member of his or her immediate family, unexpected personal expense, etc.

(Authority: 38 U.S.C. 3221(b))

(j) *Benefit period* means:

(1) For a course leading to a standard college degree:

(i) The entire enrollment period certified by the school; or

(ii) That period of time from the beginning of an enrollment period until the end of the individual's delimiting period; or

(iii) That period of time from the beginning of an enrollment period to the date on which the individual's contributions in the fund are exhausted, whichever is the shortest.

(2) For a residence course not leading to a standard college degree or for a correspondence course that period of time from the beginning of the enrollment period as certified by the school or the date the school last certified on the quarterly certification of attendance, whichever is later, to:

(i) The end of the enrollment period;

(ii) The end of the quarter to be certified;

(iii) The last date of the individual's delimiting period; or

(iv) The date on which the individual's contributions to the fund are exhausted, whichever occurs first.

(3) [Reserved]

(4) For apprenticeship and other on-job training that period of time from the beginning date of training or the date last certified on the monthly certification of training to—

(i) The end of the month to be certified;

(ii) The last date of the veteran's delimiting period;

(iii) The date on which the veteran's entitlement is exhausted, whichever occurs first.

(Authority: 38 U.S.C. 3231; Pub. L. 99–576)

(k) *Benefit payment*—means all educational assistance allowance paid to a veteran for pursuit of a program of education during a benefit period.

(Authority: 38 U.S.C. 3231)

(l) *Spouse*—means a person of the opposite sex who is the wife or husband of the participant, and whose marriage to the participant meets the requirements of § 3.1(j) of this chapter.

(Authority: Sec. 903, Pub. L. 96–342, 94 Stat. 1115)

(m) *Surviving spouse*—means a person of the opposite sex who is a widow or widower of the participant, and whose marriage to the participant meets the requirements of § 3.1(j) or § 3.52 of this chapter.

(n) *Child*—(1) for the purposes of § 21.5067(a) this term means a natural child, step-child or adopted child of the participant regardless of age or marital status.

(2) For all other purposes this term means a person whose relationship to the participant meets the requirements of § 3.57 or § 3.58 of this chapter.

(o) *Parent*—means a person whose relationship to the participant meets the requirements of § 3.59 of this chapter.

(Authority: 38 U.S.C. 3224)

(p) *Training establishment*—means any establishment providing apprentice or other training on-the-job, including those under the supervision of a college or university or any State department of education, or any State apprenticeship agency, or any State board of vocational education, or any joint apprenticeship committee, or the Bureau of Apprenticeship and Training established in accordance with 29 U.S.C. Chapter 4C, or any agency of the Federal Government authorized to supervise such training.

(Authority: 38 U.S.C. 3202(5), 3452(e); Pub. L. 99–576)

(q) *Program of education*—means—

(1) Any curriculum or combination of subjects or unit courses pursued at a school which is generally accepted as

necessary to meet requirements for a predetermined and identified educational, professional or vocational objective;

(2) Subjects or unit courses which fulfill requirements for more than one predetermined and identified objective if all objectives pursued are generally recognized as being related to a single career field;

(3) Any unit course or subject or combination of courses or subjects, pursued by an individual at an educational institution, required by the Administrator of the Small Business Administration as a condition to obtaining financial assistance under the provisions of 15 U.S.C. 636; or

(4) A full-time program of apprenticeship or other on-job training approved as provided in §§ 21.4261 or 21.4262 of this part as appropriate.

(Authority: 38 U.S.C. 3202(2), 3452(b); Pub. L. 99–576)

(r) *Educational objective*—An *educational objective* is one that leads to the awarding of a diploma, degree or certificate which is generally recognized as reflecting educational attainment.

(Authority: 38 U.S.C. 3202(2), 3452(b))

(s) *Professional or vocational objective*—A *professional or vocational objective* is one that leads to an occupation. It may include educational objectives essential to prepare for the chosen occupation. When a program of education consists of a series of courses not leading to an educational objective, these courses must be generally accepted as necessary for attainment of a designated professional or vocational objective.

(Authority: 38 U.S.C. 3202(2))

(t) *Deficiency course*—The term *deficiency course* means any secondary level course or subject not previously completed satisfactorily which is specifically required for pursuit of a post-secondary program of education.

(Authority: 38 U.S.C. 3241; Pub. L. 100–689)

(u) *Refresher course*—The term *refresher course* means—

(1) Either a course at the elementary or secondary level to review or update material previously covered in a course

Department of Veterans Affairs

§ 21.5022

that has been satisfactorily completed, or

(2) A course which permits an individual to update knowledge and skills or be instructed in the technological advances which have occurred in the individual's field of employment during and since the individual's active military service and which is necessary to enable the individual to pursue an approved program of education.

(Authority: 38 U.S.C. 3241(a); Pub. L. 100-689, Pub. L. 101-237).

(v) *Disabling effects of chronic alcoholism.* (1) The term *disabling effects of chronic alcoholism* means alcohol-induced physical or mental disorders or both, such as habitual intoxication, withdrawal, delirium, amnesia, dementia, and other like manifestations of chronic alcoholism which, in the particular case—

(i) Have been medically diagnosed as manifestations of alcohol dependency or chronic alcohol abuse, and

(ii) Are determined to have prevented commencement or completion of the affected individual's chosen program of education.

(2) A diagnosis of alcoholism, chronic alcoholism, alcohol-dependency, chronic alcohol abuse, etc., in and of itself, does not satisfy the definition of this term.

(3) Injury sustained by a veteran as a proximate and immediate result of activity undertaken by the veteran while physically or mentally unqualified to do so due to alcoholic intoxication is not considered a disabling effect of chronic alcoholism.

(Authority: 38 U.S.C. 105, 3232, 3462; Pub. L. 100-689)

(w) *Continuous service* means—

(1) Active duty served without interruption. A complete separation from active duty service will interrupt the continuity of active duty service.

(2) Time lost while on active duty will not interrupt the continuity of service. Time lost includes, but is not limited to, excess leave, noncreditable time and not-on-duty time.

(Authority: 38 U.S.C. 3232(a); Pub. L. 101-237)

(x) *Persian Gulf War.* The term "Persian Gulf War" means the period beginning on August 2, 1990, and ending on

the date thereafter prescribed by Presidential proclamation or by law.

(Authority: 38 U.S.C. 101(33))

(y) *Alternative teacher certification program.* The term *alternative teacher certification program* for the purposes of determining whether an entity offering such a program is a school, educational institution or institution, as defined in paragraph (d)(3) of this section, means a program leading to a teacher certificate that allows individuals with a bachelor's degree or graduate degree to obtain teacher certification without enrolling in an institution of higher learning.

(Authority: 38 U.S.C. 3202(2), 3452(c))

[45 FR 31, Jan. 2, 1980, as amended at 47 FR 51743, Nov. 17, 1982; 52 FR 3429, Feb. 4, 1987; 53 FR 34495, Sept. 7, 1988; 55 FR 31581, Aug. 3, 1990; 57 FR 38614, Aug. 26, 1992; 58 FR 34369, June 25, 1993; 61 FR 1526, Jan. 22, 1996]

§ 21.5022 Eligibility under more than one program.

(a) *Concurrent benefits under more than one program.* An individual may not receive educational assistance under 38 U.S.C. Chapter 32 concurrently with benefits under any of the following provisions of law:

(1) 38 U.S.C. Chapter 31;

(2) 38 U.S.C. Chapter 35;

(3) 10 U.S.C. Chapter 107;

(4) 10 U.S.C. Chapter 1606;

(5) Section 903 of the Department of Defense Authorization Act, 1981 (10 U.S.C. 2141 note); or

(6) The Omnibus Diplomatic Security and Antiterrorism Act of 1986.

(Authority: 38 U.S.C. 3681(b))

(b) *Total eligibility under more than one program.* (1) No one may receive a combination of educational assistance benefits under 38 U.S.C. Chapter 32 and any of the following provisions of law for more than 48 months (or part-time equivalent):

(i) 38 U.S.C. Chapter 30;

(ii) 38 U.S.C. Chapter 35;

(iii) 10 U.S.C. Chapter 107;

(iv) 10 U.S.C. Chapter 1606;

(v) Section 903 of the Department of Defense Authorization Act, 1981 (10 U.S.C. 2141, note);

(vi) The Hostage Relief Act of 1980 (5 U.S.C. 5561 note); or